

# Exhibit

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 and NFL PROPERTIES LLC

17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA

19 VERNON MAXWELL, et al.,

20 Plaintiffs,

21 v.

22 NATIONAL FOOTBALL LEAGUE,  
 23 et al.,

24 Defendants.

CASE NO. CV 11-08394 R(MANx)

ORDER DENYING PLAINTIFFS'  
 MOTION TO REMAND

Date: December 5, 2011  
 Time: 10:00 AM  
 Judge: Hon. Manuel L. Real

Notice of related cases:  
 No. CV 11-08395 R (MANx)  
 No. CV 11-08396 R (MANx)

27  
 28 Plaintiffs' motion to remand this action to state court came on for

1 hearing on December 5, 2011, the Honorable Manuel L. Real presiding. After  
2 consideration of the briefs and arguments of counsel, and all other matters  
3 presented to the Court, the Court DENIES plaintiffs' motion for the reasons that  
4 follow.

5 Generally, under the well-pleaded complaint rule, a defendant cannot  
6 remove state-law claims to federal court even if the defendant has a defense based  
7 on federal law. *Milne Emps. Ass'n v. Sun Carriers, Inc.*, 960 F.2d 1401 (9th Cir.  
8 1991). However, the Supreme Court has concluded that the preemptive force of  
9 some statutes is so strong that they completely preempt an area of state law. In  
10 such cases, any claim purportedly based on that preempted state law is considered a  
11 federal claim, and therefore arises under federal law. *Franchise Tax Board v.*  
12 *Constr. Laborers Vacation Trust*, 463 U.S. 1 (1983).

13 The Supreme Court has held that federal law exclusively governs suits  
14 for breach of a collective bargaining agreement ("CBA"). *Textile Workers Union v.*  
15 *Lincoln Mills*, 353 U.S. 448 (1957). In addition, section 301 of the Labor  
16 Management Relations Act preempts state law claims that are substantially  
17 dependent upon or inextricably intertwined with the terms of a CBA. *Allis-*  
18 *Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

19 Here, the Court finds the decision in *Stringer v. National Football*  
20 *League*, 474 F. Supp. 2d 894 (S.D. Ohio 2007), to be persuasive and concludes that  
21 plaintiffs' second cause of action, for negligence against the defendant National  
22 Football League ("NFL"), is preempted. Its resolution is inextricably intertwined  
23 with and substantially dependent upon an analysis of certain CBA provisions  
24 imposing duties on the clubs with respect to the medical care and treatment of NFL  
25 players.

26 The CBA provisions that relate to the duties of team physicians are  
27 implicated. The CBA places primary responsibility for identifying such physical  
28 conditions on the team physicians. *Stringer*, 474 F. Supp. 2d at 910. Plaintiffs'

1 complaint alleges a “[f]ailure to ensure accurate diagnosis and recording of  
2 concussive brain injury so the condition can be treated in an adequate and timely  
3 manner.” (Compl. ¶ 548.) The physician provisions of the CBA must be taken into  
4 account in determining the degree of care owed by the NFL and how it relates to  
5 the NFL’s alleged failure to establish guidelines or policies to protect the mental  
6 health and safety of its players. The Court reaches a similar conclusion when  
7 examining the CBA provisions relating to the teams’ athletic trainers.

8 Having concluded that at least one of plaintiffs’ claims is preempted  
9 by section 301, it is unnecessary at this stage of the proceedings to determine  
10 whether plaintiffs’ other claims are also preempted. That determination is better  
11 left for the motion-to-dismiss stage. As long as at least one federal claim is present,  
12 this Court can exercise supplemental jurisdiction over the remaining claims  
13 pursuant to 28 U.S.C. § 1367.

14 Thus, defendants’ removal of this action was proper and, therefore,  
15 plaintiffs’ motion to remand is denied.

16 IT IS SO ORDERED.

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18  
19 DATED: December 8, 2011

  
THE HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT COURT